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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,737	09/12/2003	Michael Z. Martin	544332000400	4924
28694	7590	07/13/2006	EXAMINER	
NOVAK DRUCE & QUIGG, LLP 1300 EYE STREET NW 400 EAST TOWER WASHINGTON, DC 20005			MCCORMICK, MELENIE LEE	
			ART UNIT	PAPER NUMBER
			1655	

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/660,737	MARTIN, MICHAEL Z.
	Examiner Melenie Alonis	Art Unit 1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-14 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

The Restriction/Election requirement set forth in the previous Office action is hereby vacated. Upon further review, the following Restriction/Election requirement is deemed necessary and, thus, replaces the previous Restriction/Election requirement.

### *Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-10, drawn to a soluble composition extracted from a plant material comprising three or more classes of substances selected from the group consisting of carotenoids, anthocyanins, fatty acids, terpenes and alkaloids, classified in class 424, subclass 725, for example.
- II. Claim 11, drawn to a soluble composition extracted from plant material comprising carotenoids, anthocyanins, and complex tannins, in relative ratios that mimic their ratios in the unextracted plant material, classified in class 424, subclass 732, for example.
- II. Claims 12-14, drawn to a soluble composition extracted from plant material comprising organic acids, amino acids, fatty acids, carotenoids, phytoestrogens, anthocyanins, flavones/isoflavones, saccharides, terpenes, and complex tannins in relative ratios that are within 100% of their ratios in the unextracted plant material classified in class 424, subclass 769, for example.

The inventions are distinct, each from the other because of the following reasons:

The products of Groups I-III (each of which are essentially unsearchable as claimed based upon the vast plethora of potential soluble plant compositions encompassed by the instant claim language) are different and distinct, each from the other for the following reasons: The product of Group I does not require the presence of complex tannins, which is required of each of the Group II and III products. The products of Groups II and III are different and distinct, each from the other, because the product of Group II does not require the presence of numerous substances (such as organic acids, amino acids, fatty acids, phytoesterols, etc) which are required of the Group III product. Conversely, the product of Group III requires the presence of numerous substances (such as organic acids, amino acids, fatty acids, phytoesterols, etc) which are not required for the Group II product. In addition, the ratios used to define the various substances in the Groups II and III products are not the same (i.e., in relative ratios that mimic their ratios in the unextracted plant material vs. in relative ratios that are within 100% of their ratios in the unextracted plant material).

Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

In addition, this application contains claims directed to the following patentably distinct species:

- A. For the products of Groups I-III, the various disclosed plants from which the extracted plant material -soluble composition is obtained.
- B. For the product of Group I, the various combinations of three or more of the recited substances instantly claimed.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species (i.e., for species A, elect a particular plant from which the soluble composition is obtained; and for species B, elect a particular combination of three or more substances from those instantly claimed) for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 11, and 12 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Again, please note that the recited soluble compositions are essentially unsearchable as instantly claimed. They encompass such a vast plethora of potential soluble plant compositions that no meaningful search would be possible. Accordingly, to hasten prosecution, it is strongly

suggested that Applicant amend the claims in such a way as to clearly define the disclosed/claimed invention in response to this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melenie Alonis whose telephone number is (571) 272-8037. The examiner can normally be reached on M-F 7:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CHRISTOPHER R. TATE  
PRIMARY EXAMINER